

APP/R1845/C/23/3320687: Land at "Top Acre",

Cursley Lane, Shenstone, Worcestershire

Appendix RJ2



Department for
Communities and
Local Government

Mr Philip Brown
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Our Ref: APR/R1845/A/12/2183527

30 July 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MRS SARAH JANE SMITH AT TOP ACRES, CURSLEY LANE,
SHENSTONE, KIDDERMINSTER DY10 4DX
APPLICATION REF: 11/0545/FULL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr AR Hammond MA, MSc, CEng, MIET, MRTPI, who held a hearing on 26 March 2013 into your client's appeal. The appeal was against a decision by Wyre Forest District Council ('the Council') to refuse to grant planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. The application (Application ref:11/0545/FULL) sought planning permission for the use of land at Top Acres, Off Cursley Lane, Shenstone, Kidderminster DY10 4DX for the stationing of caravans for residential purposes, the laying of hardstanding and erection of a close boarded and gravel boarded fence without complying with conditions attached to planning permission 06/1062/FULL granted on appeals Ref APPP/R1845/C/07/2039465, APP/R1845/ C/07/2039453 and Ref APP/R1845/A/07/2040181, dated 26 November 2007.
2. On 3 July 2013, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990 because it involves proposals for a Gypsy and Traveller site in the Green Belt.

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Policy considerations

9. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case, the development plan comprises the saved policies of the Adopted Wyre Forest District Local Plan, the saved policies of the Adopted Wyre Forest Core Strategy (December 2010) and the Site Allocations and Policies Local Plan (July 2013), including Policies GB1, GB2, GB6, H2, H9, H16, D10 and TR17 of the Wyre Forest District Local Plan, and Policies CP06, CP11, CP12, DS01 and DS04 of the Wyre Forest Core Strategy.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework'); the planning practice guidance published 6 March 2014; Planning Policy for Traveller Sites (PPTS); and the Written Ministerial Statements on Planning and Travellers of 1 July 2013 and 17 January 2014.

Main issues

12. The Secretary of State agrees with the Inspector (IR1) that the main issue in this case is whether the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations, so as to justify the scheme on the basis of very special circumstances.

Harm to the Green Belt

13. The Secretary of State agrees with the Inspector and the parties that the use of the land for the stationing of a caravan for residential purposes in inappropriate development in the Green Belt (IR4). The Secretary of State agrees with the Inspector at IR5, in line with the Inspector in appeals Ref APPP/R1845/C/07/2039465, APP/R1845/ C/07/2039453 and Ref APP/R1845/A/07/2040181, dated 26 November 2007, that the development causes additional limited harm to the openness of the Green Belt; limited harm to the purposes of including land in the Green Belt by virtue of encroachment into the surrounding countryside; and limited harm to the visual amenity of the Green Belt. In doing so the Inspector in the 2007 appeals took into account the mitigating effect of landscaping. The Inspector in the 2007 appeals also found a small degree of additional harm to the character and appearance of the surrounding rural area contrary to the Development Plan countryside protection policies (IR6). The Secretary of State agrees that since the 2007 appeals the landscaping scheme has significantly mitigated the harm to the visual amenity of the Green Belt and the character and appearance of the surrounding area, as described in IR7. However, he further agrees that the harm by virtue of inappropriateness and the purposes of including land in the Green Belt, and the limited harm to openness, remain.

The best interests of the children

18. The Secretary of State considers that the best interests of the appellant's children are a matter of considerable weight, and as such he has taken into account the personal circumstances set out at IR16, and the school reports of Sarah Smith submitted to the hearing. He agrees with the Inspector that it is in the best interests of the children that they have a stable education and access to welfare (IR16).

Human rights

19. The Secretary of State agrees with the Inspector (IR17) that dismissal of the appeal would be likely to result in the extended family's eviction from the site. However, he does not agree with the Inspector that this would involve the loss of their home with no satisfactory alternative, for the reasons given at paragraph 16 above. As such he considers it to be proportionate to refuse planning permission in the circumstances of this case. He agrees with the Inspector (IR19) that the need to maintain a Gypsy lifestyle is an important factor in the decision making process, and that Gypsies without an authorised site face difficulties in continuing their traditional way of life within the law. However, for the reasons given at paragraph 16, he does not agree that there is a lack of available alternative accommodation in this case which would lead to the interference with the appellant and her family's right to a home and family life.
20. The Secretary of State agrees with the Inspector (IR18) that the objections to the development are serious ones, that the overall harm to the Green Belt could not be overcome by planning conditions, and that there is a need for restrictive Green Belt policies to be applied to the area and that this restriction is an appropriate proportional response to that need. He further agrees that this legitimate aim can only be safeguarded by the cessation of use (IR18).
21. The Secretary of State agrees with the Inspector that the appellant's home was established in the knowledge that it did not benefit from planning permission, and that the Inspector in the 2007 appeal stated that the grant of a temporary permission had been granted should not be regarded as setting a precedent for the determination of a future application for future permission (IR20), and he takes this into account when considering whether it would be proportionate to refuse planning permission.

Balancing exercise

22. Having had regard to the evidence, the Secretary of State has weighed the harm to the Green Belt due to inappropriateness, to the harm to the purposes of including land in the Green Belt, loss of openness, visual amenity and to the character and appearance of the area against the material considerations in favour of the development. He agrees with the Inspector at IR21 that the harm to the purposes of including land in the Green Belt, to the openness and visual amenity of the Green Belt and the character and appearance of the area are limited. However, he further agrees with the Inspector (IR21) that the harm by virtue of inappropriateness is fundamental and cannot be overcome by conditions. He therefore attaches substantial weight to these harms.

Formal Decision

28. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal against a refusal to grant planning permission for the use of land at Top Acres, Off Cursley Lane, Shenstone, Kidderminster DY10 4DX for the stationing of caravans for residential purposes, the laying of hardstanding and erection of a close boarded and gravel boarded fence without complying with conditions attached to planning permission 06/1062/FULL granted on appeals Ref APPP/R1845/C/07/2039465, APP/R1845/ C/07/2039453 and Ref APP/R1845/A/07/2040181, dated 26 November 2007.

Right to challenge the decision

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

30. A copy of this letter has been sent to Wyre Forest District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Philip Barber
Authorised by Secretary of State to sign in that behalf

File Ref: APP/R1845/A/12/2183527

Top Acres, Cursley Lane, Shenstone, Kidderminster DY10 4DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mrs Sarah Jane Smith against the decision of Wyre Forest District Council.
- The application Ref 11/0545/FULL, dated 15 August 2011, was refused by notice dated 16 March 2012.
- The application sought planning permission for use of the land at Top Acres, Off Cursley Lane, Shenstone, Kidderminster DY10 4DX for the stationing of caravans for residential purposes, the laying of hardstanding and erection of a close boarded and gravel board fence without complying with conditions attached to planning permission 06/1062/FULL granted on appeals Ref APP/R1845/C/07/2039465, APP/R1845/C/07/2039453 and APP/R1845/A/07/2040181, dated 26 November 2007.
- The conditions in dispute are Nos 1 and 2 which state that:
 - 1) The use hereby permitted shall be carried on only by Sarah Jane Smith, Vera Smith and their dependants and shall be for a limited period being the period of 5 years from the date of this decision, or the period during which the premises are occupied by them whichever is the shorter.
 - 2) When the premises cease to be occupied by Sarah Jane Smith, Vera Smith and their dependants, or at the end of 5 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought onto the premises in connection with the use hereby approved shall be removed, and the land restored to its condition before the use commenced.
- The reasons given for the conditions are that the circumstances of the appeal justified the grant of a temporary planning permission on the basis of very special circumstances but did not justify the grant of permanent planning permission for inappropriate development in the Green Belt.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Main Issue

1. The main issue in this appeal is whether the harm by virtue of inappropriate development in the Green Belt, and any other harm, is clearly outweighed by other considerations so as to justify the scheme on the basis of very special circumstances.

Reasons

2. The application sought to remove all reference to five years from the conditions, thereby creating a permanent planning permission.
3. Since the previous appeal decision Planning Policy for Traveller Sites (PPTS), issued in March 2012, has replaced ODPM Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites and the National Planning Policy Framework (the Framework), also issued in March 2012, replaced most national planning guidance and statements, including PPG2: Green Belts
4. Nevertheless Government policy, as expressed in the Framework and PPTS remains that travellers sites (temporary or permanent) are inappropriate development in the Green Belt, which is, by definition, harmful and should not

appellant's husband, Anthony, has since returned to live with her and they have a four month old baby.

12. In the previous decision the Inspector considered in detail the accommodation needs and history of Vera Smith and of Sarah Jane Smith and her 3 daughters and concluded at Paragraph 34 of the decision that "I conclude that they have a personal need for lawful accommodation and the obvious difficulties that they would experience in seeking a suitable alternative site is a material consideration that must carry considerable weight in this appeal."
13. The circumstances surrounding the accommodation needs have not changed materially except for the additional need relating to the young baby. Therefore the accommodation needs remain a consideration of considerable weight.

The healthcare needs of Sarah Jane Smith and Vera Smith.

14. The previous Inspector accepted that Vera Smith had serious health problems having had a heart attack in 2000 as well as suffering a number of other underlying health problems requiring ongoing monitoring. She has since had her gall bladder removed. The Inspector concluded that "Her access to health care facilities is not entirely dependent upon her living at this particular site but I consider that her medical problems would be far more difficult to manage if she did not have a settled base..... In my opinion, her particular medical needs should be afforded considerable weight."
15. In addition Sarah Jane Smith is currently receiving day patient hospital treatment in Kidderminster. This adds further weight in favour of the appellant.

The best interests of the children

16. The appellant's eldest daughter attends secondary school in Kidderminster and Annalese and Chelsea attend lower school in Chaddesley Corbett. They, along with Mr & Mrs Smith's baby daughter, who is currently receiving specialist eye treatment at hospital, have access to a local doctor. It is clearly in the best interest of the children that they have a stable education and access to welfare. In the current absence of an alternative site within the area for the family to move to the best interests of the children, in the form of education and access to welfare, are a matter of considerable weight as established by case law including, most recently, *AZ v. Secretary of State for Communities and Local Government and South Gloucestershire District Council* [2012] EWHC 3660.

Human Rights

17. As regards the submissions made under Article 8 of the European Convention on Human Rights, the dismissal of the appeal would be likely to result in the extended family's eviction from the site and interference with their home and private and family life. In particular, it could result in the loss of their home with no satisfactory alternative. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case.
18. That interference and the rights of these Gypsies must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8, particularly the economic well-being of the country (which includes the preservation of the environment). The objections to the development are

permission for a period of 3 years would enable the process of identifying suitable sites to be concluded and in the meantime the family would not have to leave the site and suffer the considerable hardship that the likely living at the roadside would entail.

26. I conclude that the substantial harm, when for a limited period, is clearly outweighed by other considerations including the current unmet need for suitable Gypsy sites in the area, the present lack of a suitable alternative site, the personal needs and circumstances of this particular Gypsy family and the prospect of progress towards an adopted Gypsy and Traveller DPD over the temporary period. Very special circumstances therefore exist to justify the grant of a temporary planning permission for the period of 3 years.

Planning Conditions

27. Allowing the appeal would create a new planning permission. For the reasons given above the permission should be for a temporary period and personal to Vera Smith, Anthony Smith and Sarah Jane Smith and their dependants. Since a personal condition is being imposed it is not necessary to impose a Gypsy-occupancy condition.
28. So as to uphold the purposes and preserve the openness of the Green Belt and to protect the rural character and appearance of the surroundings it is necessary to impose conditions limiting the number of caravans on the site, controlling the siting within the plot, preventing other structures or buildings being brought onto site, maintaining the approved landscaping scheme and the approved scheme for the storage and disposal of waste.

Recommendation

29. I recommend that the appeal be allowed and temporary planning permission be granted subject to the conditions in the attached schedule.

Andrew Hammond

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Brown

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Anthony Smith

Sarah Jane Smith

FOR THE LOCAL PLANNING AUTHORITY:

John Baggott

Wyre Forest District Council

Jonathan Elmer

Wyre Forest District Council